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AB-2496 Foster family agencies and noncustodial adoption agencies. (2023-2024)

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Assembly Bill No. 2496

CHAPTER 403

An act to add and repeal Chapter 11 (commencing with Section 1062.30) to Title 14 of Part 2 of the Code of Civil Procedure, to amend Section 1517.5 of the Health and Safety Code, and to amend Section 16519.58 of the Welfare and Institutions Code, relating to foster family agencies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2024. Filed with Secretary of State September 22, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2496, Pellerin. Foster family agencies and noncustodial adoption agencies.

(1) Existing law, the California Community Care Facilities Act, among other things, provides for the licensure and regulation of foster family agencies, which are organizations engaged in the recruiting, certifying, approving, and training of, and providing professional support to, foster parents and resource families, or in finding homes for foster children in need of care. Existing law also regulates noncustodial adoption agencies, which are licensed entities engaged in the business of providing adoption services.

Existing law provides for liability insurance to protect against loss resulting from liability for an injury suffered by a person or for damage to property. Existing case law establishes obligations liability insurers have to the insured, including the duty to indemnify and the duty to defend.

This bill would authorize a foster family agency or noncustodial adoption agency, also known as FFA, to be held liable for injury or damage caused by that FFA's negligence but not for the injury or damage caused by the public entity. The bill would require the FFA and the public entity to each bear the cost of insuring against their respective acts and omissions and defending against claims arising from those risks. The bill would prohibit the above provisions from being waived or suspended by a court, and would specify that certain contract provisions with indemnification provisions would be void as against public policy and unenforceable.

This bill would repeal these provisions on January 1, 2027.

(2) Existing law authorizes a resource family that is currently approved by a foster family agency or a county to be approved by a subsequent foster family agency upon the completion of specified activities, including the resource family submitting an application and the subsequent foster family agency conducting a background check and reference check, as specified. Existing law also authorizes a resource family approved by a foster family agency to transfer their approval to a county upon the completion of similar activities.

This bill would specify that the rate paid on behalf of a child or nonminor dependent placed with an approved resource family who has applied for a transfer pursuant to those provisions is the rate most recently established for the child or nonminor dependent. The bill would authorize, upon approval of the resource family by the subsequent foster family agency or county, the rate to be

adjusted based on the needs of the child. The bill would also authorize the State Department of Social Services, until January 1, 2027, to waive provisions governing the transfer of resource family approval other than those provisions related to background checks. The bill would make these provisions effective on October 1, 2024, or the effective date of the bill, whichever is later. The bill would authorize the department to implement these provisions by all-county letters or similar directives.

The bill would also require the department to report certain information the Legislature relating to the transfer of resource family approval in conjunction with the 2025 May Revision. The bill would require the department, in coordination with other relevant entities, to examine available options to make insurance available to foster family agencies and update the Legislature on these efforts in conjunction with the 2025-26 fiscal year budget process.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 11 (commencing with Section 1062.30) is added to Title 14 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 11. Foster Family Agency Accountability

1062.30. This chapter applies to any claim or lawsuit against a foster family agency or a noncustodial adoption agency for the acts of their employees, contractors, or volunteers brought by a recipient of those services or on the recipient's behalf.

1062.31. It is the public policy of the State of California that foster family agencies or noncustodial adoption agencies, also known as FFAs, provide necessary services to vulnerable youth throughout the state and are integral to the foster care system. Consequently, FFAs are afforded the rights set forth in this chapter.

1062.32. For the purposes of this chapter, the following definitions apply:

(a) "FFA" means a foster family agency or a noncustodial adoption agency, as these terms are defined in Section 1502 of the Health and Safety Code.

(b) "Public entity" has the same meaning as defined in Section 811.2 of the Government Code.

1062.33. (a) An FFA may be held liable for injury or damage caused by the negligence of the FFA but not for the injury or damage caused by the public entity, including its officers, employees, or volunteers, acting in its capacity. The FFA and the public entity shall each bear the cost of insuring against their respective acts and omissions and shall each bear the costs of defending itself against claims arising from those risks.

(b) (1) Notwithstanding any other law, subdivision (a) shall not be waived or suspended by any court. Any provision in a nongovernmental organization contract for child, youth, and family services in which a public entity is indemnified, held harmless, or insured for damages, claims, losses, or expenses arising from injury or damage, including, but not limited to, bodily injury, mental anguish, property damage, or economic or noneconomic damages or loss, caused by or resulting from a public entity's negligence or intentional conduct, in whole or in part, shall be void as against public policy and unenforceable.

(2) Subdivision (a) does not limit or affect the immunity provided by any other law that would otherwise be an available defense to either party.

1062.34. This chapter shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 2. Section 1517.5 of the Health and Safety Code is amended to read:

1517.5. (a) A resource family currently approved by a foster family agency pursuant to this section or Section 1517 may be approved by a subsequent foster family agency upon the successful completion of activities, as specified by the department, which shall include, but not be limited to, all of the following:

(1) The resource family shall complete the following activities:

(A) Submit an application for resource family approval to the subsequent foster family agency.

(B) Notwithstanding paragraph (1) of subdivision (h) of Section 1522, comply with the criminal record clearance requirements set forth in Section 16519.5 of the Welfare and Institutions Code as part of an approval update with the subsequent foster family agency, including the submission of fingerprints pursuant to Section 8712 of the Family Code.

(C) Cooperate with the subsequent foster family agency in conducting an approval update, as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(2) (A) The subsequent foster family agency shall complete all of the following activities:

(i) Conduct a background check of the resource family and all adults residing or regularly present in the home in accordance with Section 1517 and as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(ii) Conduct a reference check pursuant to Section 1517.2.

(iii) Complete an approval update for the resource family, as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(I) The subsequent foster family agency shall request a copy of the written report completed pursuant to Section 1517, any updates to the written report regarding the resource family from the current foster family agency, and documents in the resource family case record, including any updates to the resource family case record, as specified in the written directives or regulations adopted by the department, from the current foster family agency.

(II) The current foster family agency shall forward a copy of the written report completed pursuant to Section 1517, any updates to the written report regarding the resource family to the subsequent foster family agency, and documents in the resource family case record, including any updates to the resource family case record, as specified in the written directives or regulations adopted by the department, to the subsequent foster family agency within 20 business days of receipt of the request.

(B) (i) Notwithstanding subparagraph (A), a subsequent foster family agency shall not approve or deny an application if there is a pending investigation that poses a health and safety risk or a pending administrative action against the applicant or an adult residing in the home, as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(ii) A subsequent foster family agency may approve or deny the application after the investigation or administrative action has concluded, and the subsequent foster family agency confirms the applicant is still eligible to apply for approval and does not pose a health and safety risk to children or nonminor dependents.

(b) A resource family currently approved by a county pursuant to Section 16519.5 of the Welfare and Institutions Code may be approved by a subsequent foster family agency upon the successful completion of activities, as specified by the department, which shall include, but not be limited to, all of the following:

(1) The resource family shall complete all of the following activities:

(A) Submit an application for resource family approval to the subsequent foster family agency.

(B) Notwithstanding paragraph (1) of subdivision (h) of Section 1522, comply with the criminal record clearance requirements set forth in Section 16519.5 of the Welfare and Institutions Code as part of an approval update with the subsequent foster family agency, including the submission of fingerprints pursuant to Section 8712 of the Family Code.

(C) Cooperate with the subsequent foster family agency in conducting an approval update, as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(2) (A) The subsequent foster family agency shall complete all of the following activities:

(i) Conduct a background check of the resource family and all adults residing or regularly present in the home in accordance with Section 1517 and as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(ii) Conduct a reference check pursuant to Section 1517.2.

(iii) Complete an approval update for the resource family, as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(I) The subsequent foster family agency shall request a copy of the written report completed pursuant to Section 16519.5 of the Welfare and Institutions Code, any updates to the written report regarding the resource family, and documents in the resource family file, including any updates to the resource family file, as specified in the written directives or regulations adopted by the department, from the county.

(II) The county shall forward a copy of the written report and any updates to the written report completed pursuant to Section 16519.5 of the Welfare and Institutions Code regarding the resource family, and documents in the resource family file, including any updates to the resource family file, as specified in the written directives or regulations adopted by the department, to the subsequent foster family agency within 20 business days of receipt of the request.

(B) (i) Notwithstanding subparagraph (A), a subsequent foster family agency shall not approve or deny an application if there is a pending investigation that poses a health and safety risk or a pending administrative action against the applicant or an adult residing in the home as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5 of the Welfare and Institutions Code.

(ii) A subsequent foster family agency may approve or deny the application after the investigation or administrative action has concluded, and the subsequent foster family agency confirms the applicant is still eligible to apply for approval and does not pose a health and safety risk to children or nonminor dependents.

(c) Resource family approval by a current foster family agency or a county shall be forfeited by operation of law upon approval as a resource family by a subsequent foster family agency in accordance with this section.

(d) A resource family approved pursuant to this section shall comply with the written directives or regulations adopted pursuant to Section 16519.5 of the Welfare and Institutions Code and comply with other applicable federal and state laws in order to maintain approval.

(e) Effective October 1, 2024, or upon the effective date of the act that added this subdivision, whichever is later, the rate paid on behalf of a child or nonminor dependent to an approved resource family approved by a licensed foster family agency or county child welfare agency that has applied to transfer their approval to a licensed foster family agency pursuant to this section shall be the rate most recently established for the child or nonminor dependent pursuant to Section 11461. Upon approval of the resource family by the foster family agency pursuant to this section, the rate may be adjusted based on the needs of the child, consistent with guidance provided by the department.

(f) (1) Effective October 1, 2024, or upon the effective date of the act that added this subdivision, whichever is later, the department may temporarily waive provisions of this section to facilitate the expedient transfer of the approval of a resource family approval that was approved by a licensed foster family agency pursuant to this section or Section 1517 to another licensed foster family agency. Waivers pursuant to this subdivision shall not include waivers of background check requirements.

(2) It is the intent of the Legislature that, as part of this process, the department provide, on a timely basis, any information and documentation related to pending investigations and administrative actions against the resource family to the foster family agency to facilitate decisions regarding approval of the resource family.

(3) This subdivision shall be inoperative on January 1, 2027.

(g) For purposes of this section, the following definitions apply:

(1) "Current foster family agency" means a foster family agency by which a resource family is currently approved pursuant to this section or Section 1517.

(2) "Subsequent foster family agency" means a foster family agency to which a resource family has submitted an application for resource family approval pursuant to this section.

(3) "County" means a county child welfare or probation department by which a resource family is currently approved pursuant to Section 16519.5 of the Welfare and Institutions Code.

SEC. 3. Section 16519.58 of the Welfare and Institutions Code is amended to read:

16519.58. (a) A resource family approved by a licensed foster family agency pursuant to Section 1517 or 1517.5 of the Health and Safety Code may transfer their approval to a county upon the successful completion of activities, as specified by the department, which shall include, but not be limited to, all of the following:

(1) The resource family shall complete the following activities:

(A) Submit to the county information necessary to initiate the transfer process on a form specified by the department.

(B) Authorize the county to request that clearances and exemptions issued to the resource family and all adults residing or regularly present in the home be transferred from the department to the county pursuant to subdivision (h) of Section 1522 of the Health and Safety Code.

(C) Cooperate with the county in conducting an approval update, as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5.

(2) (A) The county shall complete the following activities:

(i) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code and Section 1522.1 of the Health and Safety Code, submit a request to the Department of Justice as specified in paragraph (4) of subdivision (h) of Section 1522 of the Health and Safety Code.

(ii) Complete an approval update for the resource family as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5.

(I) The county shall request a copy of the written report completed pursuant to Section 1517 of the Health and Safety Code, any updates to the written report regarding the resource family, and documents in the resource family case record, including any updates to the resource family case record, as specified in the written directives or regulations adopted by the department, from the licensed foster family agency.

(II) The licensed foster family agency shall forward a copy of the written report completed pursuant to Section 1517 of the Health and Safety Code, any updates to the written report regarding the resource family, and documents in the resource family case record, including any updates to the resource family case record, as specified in the written directives or regulations adopted by the department, to the county within 20 business days of receipt of the request.

(B) (i) Notwithstanding subparagraph (A), a county shall not approve or deny an application if there is a pending investigation that poses a health and safety risk or pending administrative action against the applicant or an adult residing in the home, as specified in the written directives or regulations adopted by the department pursuant to Section 16519.5.

(ii) A county may approve or deny the application after the investigation or administrative action has concluded, and the county confirms the applicant is still eligible to apply for approval and does not pose a health and safety risk to children or nonminor dependents.

(b) A county may deny a resource family's request to transfer approval to a county for any of the reasons specified in Section 16519.61. If the county denies a resource family's request, the resource family shall be entitled to a hearing, as specified in Section 16519.6.

(c) Resource family approval by a licensed foster family agency pursuant to Section 1517 or 1517.5 of the Health and Safety Code shall be forfeited by operation of law upon the transfer of the resource family approval to a county in accordance with this section.

(d) A resource family approved pursuant to this section shall comply with the written directives or regulations adopted pursuant to Section 16519.5 and comply with other applicable federal and state laws in order to maintain approval.

(e) Effective October 1, 2024, or upon the effective date of the act that added this subdivision, whichever is later, the rate paid on behalf of a child or nonminor dependent to an approved resource family approved by a licensed foster family agency that has applied to transfer their approval to a county pursuant to this section shall be the rate most recently established for the child or nonminor dependent pursuant to Section 11461. Upon approval of the resource family by the county, the rate may be adjusted based on the needs of the child, consistent with guidance provided by the department.

(f) (1) Effective October 1, 2024, or upon the effective date of the act that added this subdivision, whichever is later, the department may temporarily waive provisions of this section to facilitate the expedient transfer of an approval of a resource family that was approved by a licensed foster family agency pursuant to Section 1517 or 1517.5 of the Health and Safety Code to a county. Waivers pursuant to this subdivision shall not include waivers of background check requirements.

(2) It is the intent of the Legislature that, as part of this process, the department provide, on a timely basis, any information and documentation related to pending investigations or administrative actions against the resource family to the county to facilitate decisions regarding approval of the resource family.

(3) This subdivision shall be inoperative on January 1, 2027.

(g) For purposes of this section, the following definitions apply:

(1) "Department" means the State Department of Social Services.

(2) "County" means a county child welfare or probation department.

SEC. 4. (a) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services may

implement, interpret, or make specific subdivisions (e) and (f) of Section 1517.5 of the Health and Safety Code and subdivisions (e) and (f) of Section 16519.58 of the Welfare and Institutions Code by means of all-county letters or similar written directives, which shall be exempt from submission to or review by the Office of Administrative Law and shall have the same force and effect of regulations.

(b) The State Department of Social Services shall report to the Legislature, to the extent information is available or reported to the department by counties, in conjunction with the 2025 May Revision, the number of foster family agencies that transfer resource family approval, children, or both, as well as the number of resource family approvals transferred and the number of individual children who are transferred, and the entity to which the transfers are made. To the degree that information is known and provided by counties, the department shall additionally provide demographic information about the children who are transferred.

(c) The State Department of Social Services, in coordination with any other relevant state departments or agencies, counties, and stakeholders, shall examine available options to make insurance available to foster family agencies. The department shall update the Legislature on these efforts in conjunction with the 2025-26 fiscal year budget process.

(d) Nothing in this act is intended to create or increase liability for the State Department of Social Services beyond any liability that was explicitly imposed by California statutes in effect on the day prior to the effective date of this act.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide foster family agencies that may discontinue operation with options to transfer placements and to help minimize the impact on foster youth, it is necessary for this act to take effect immediately.